NOS. 127, 273 AND 324

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

CARPENTERS UNION, LOCAL 1976, AFL-CIO,
Petitioner
vs.
NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD, Petitioner
vs.
GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 886

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, Petitioner
vs.
NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH CIRCUIT AND FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE AFL-CIO AS AMICUS CURIAE

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Interest of the AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

This brief is submitted by the AFL-CIO because the issue involved in these cases is, as demonstrated in detail *infra* pp. 25-37, of substantial importance to a large number of international unions affiliated with the AFL-CIO.

It is the position of the AFL-CIO that when an employer has entered into a collective bargaining agreement which provides that his employees need not handle particular types of goods, a refusal by his employees to handle such goods is not a violation of Section 8(b)(4)(A) of the Act, even though the refusal to handle is union induced and is in disregard of the employer's instructions. Under such circumstances, there is neither a "strike" nor a "concerted refusal in the course of their employment" to handle goods; nor a "forcing or requiring" of any employer, as required by that section.

We believe that this conclusion is supported by the plain language and the legislative history of Section 8(b)(4)(A). By agreement with counsel for the unions which are parties to these cases, this brief is confined to this point; and to the prevalence of various types of "unfair goods" clauses in collective bargaining agreements, particularly in industries other than trucking.

SUMMARY OF ARGUMENT

I

The language of Section 8(b)(4)(A) is clear and unambiguous. There is a violation of that section only when a union induces or encourages the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to perform the services for which they were employed; and only where the object of the strike or concerted refusal is to force or require any employer or other person to cease doing business with any other person.

Nothing in the language of Section 8(b)(4)(A) expressly outlaws a "struck goods" or "hot cargo" clause; the proscribed activity is union induced employee pressure on

their employer to force or require him to exert economic pressure against another employer. Thus, apart from this proscription, a union is free under that section to appeal to employers, employees, consumers and other elements of the public to support its position.

There is no need for an express qualification for cases in which the inducement is pursuant to a "hot cargo" clause or otherwise consented to by the employer, for it is implicit in the words "forcing or requiring" that the section is inapplicable where there is employer consent; those words connote an element of involuntarism or coercion.

Employee refusal to perform services when an employer has agreed to that course of conduct does not constitute a "strike" or "concerted refusal," even though the employer subsequently repudiates his contractual obligation. Moreover, an employee refusal to perform work which the employee and employer have contractually agreed should not be performed is not a "refusal in the course * * * employment" because the "course of employment" does not include such activity. There is no logical difference between permitting employees the right not to cross a picket line to perform services at a struck plant for their employer and permitting employees the right not to perform services for their employer on goods that pass through a picket line.

There is no merit in the Board's contentions that (1) the term "concerted refusal" was intended to cover employee refusals acquiesced in by the employer and (2) employer consent is of "no moment" because the inclusion of "or other person" in subparagraph (A) indicates that the interests of others are also to be safeguarded and cannot be obliterated without their consent. As to the former, both terms "strike" and "concerted refusal" were used simply to insure the section's applicability to situations in which something less than a work stoppage may occur. As to the latter, the legislative history of Section 8(b)(4)(A) indi-

cates that it was not enacted for the benefit of persons in addition to the secondary employer immediately involved.

Nowhere in the legislative history of Taft-Hartley is there any express mention made of the "hot cargo" agreement, as such, or any indication of an intent to proscribe the use of these agreements. Congress, if it had so desired, could have readily, by appropriate language, outlawed such agreements.

The Board's entire argument is based on the premise that the legislative history of Section 8(b)(4)(A) demonstrates Congress' desire to proscribe *all* secondary boycotts and, accordingly, to safeguard the interests of the public generally. Congress had no such desire; at most, it only intended to outlaw *some* secondary boycotts, i.e., "secondary boycotts * * * for specifically defined objectives," and to protect only innocent neutrals against strike action which would involve them in labor disputes in which they were not otherwise involved. For example, a secondary boycott that is not union induced is not prohibited, nor are those sanctioned by Sections 8(b)(4)(B) and (D). The wide area of permissible secondary boycott activity shows that Congress was not primarily concerned with safeguarding the interests of the general public. Congress was concerned, however, as the Congressional reports and debates demonstrate, with the involvement of innocent neutrals in labor disputes that do not concern them.

"Hot cargo" agreements are not violative of section 8(b)(4)(A) or repugnant to "the policy of the statute." If they are, Congress has had ample opportunity to so indicate. Congress, however, has refused to take any action on proposals to outlaw such agreements.

II

Various types of unfair goods provisions are widely prevalent in collective bargaining agreements. A limited

survey conducted by the AFL-CIO Department of Research discloses more than half a million workers covered by some type of "struck goods" or "non-union" goods provision, in addition to workers covered by contracts negotiated by the Teamsters Union. This survey also reveals that such clauses have been negotiated by many different unions in a wide variety of industries, and that the clauses take a wide variety of forms.

The prevalence of such clauses and the variety of different forms they take is additional reason for concluding that had Congress wished to outlaw them it would have done so clearly and unequivocally.

ARGUMENT.

I

A Union-Induced Employee Refusal Pursuant to a "Hot Cargo" Clause, to Handle Good, Is Not in Violation of Section 8(b)(4)(A) Under the Plain Language and the Legislative History of that Section.

A. *The Language of Section 8(b)(4)(A).*

Section 8(b)(4) in relevant part reads as follows:

> "It shall be an unfair labor practice for a labor organization or its agents * * * to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer * * * or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *."

"While the statute is by no means a model of draftsmanship" (*Printing Specialties & Paper Converters Union* v.

LeBaron, 171 F. 2d 331, 335 (CA9)), the language of Section 8(b)(4)(A) has been characterized by the Second Circuit as "clear" (*Milk Drivers & Dairy Employees* v. *N.L.R.B.*, 245 F. 2d 817, 820) and by the Seventh Circuit as "unambiguous" (*Joliet Contractors Assn.* v. *N.L.R.B.*, 202 F. 2d 606, 608).[1]

Even a casual reading of "the plain unambiguous language employed by Congress in enumerating the elements required to constitute a violation" (*Joliet Contractors Assn., supra*, at p. 612) makes it clear immediately that there is a violation of the section only when (1) a union induces or encourages the employees of any employer, (2) to engage in a strike or a concerted refusal in the course of their employment to perform the services for which employed, (3) where the object of the strike or concerted refusal is to force or require any employer or other person to cease doing business with any other person. Certainly there is nothing in the bare language of Section 8(b)(4)(A), or any other section of the Act, which expressly outlaws the "struck goods" or "hot cargo" clause. Manifestly, the proscribed activity is union induced employee pressure on their employer to force him to exert economic pressure against another employer.

The means prohibited are explicitly confined to engaging in an actual strike or to inducing employees to do so. A union is not forbidden to solicit the cooperation of the neutral employer by approaching him directly. *Schatte* v.

[1] "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislative undertook to give expression to its wishes" *United States* v. *American Trucking Associations*, 310 U.S. 534, 543. And, correlatively, "legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him" *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 618.

International Alliance, 182 F. 2d 158, 165 (CA 9), certiorari denied, 340 U.S. 827. Similarly, a union may induce the customers of any employer to refrain from patronizing him. *N.L.R.B.* v. *Service Trade Chauffeurs*, 191 F. 2d 65, 68 (CA 2). Thus, as distinct from secondary pressure exerted through the medium of employees by an actual strike or its inducement, a union is free under Section 8(b)(4)(A) to prevail on employers, consumers, and other elements of the public at large to support its position.

Further, there is in the language of Section 8(b)(4)(A) no general prohibition against direct appeals to employees. The proscription therein relates solely to appeals to employees which are designed to have the employees take strike action with the object of "forcing or requiring" their employer to exert economic pressure on another. Thus, the question is whether an employer is "forced" or "required" when he is induced to comply with his contractual understanding not to handle "hot goods." We believe the Court of Appeals for the District of Columbia was correct in holding:

> "Nor can it be said that there was a 'forcing' or requiring of an employer to case doing business with another person, because the employer was only being compelled to live up to its own voluntary contract entered into in advance of the happening." (247 F. 2d at 74).

It is true, of course, as the Board's brief notes (p. 42, n. 35) "that the language contains no express qualification for cases in which the inducement is pursuant to a 'hot cargo' clause or otherwise consented to by the employer." The short answer is that there is no need for such a qualification, for it is implicit in the words "forcing or requiring" that the section is inapplicable to a situation in which there is employer consent. Those words, as commonly understood

and defined,[2] connote an element of involuntarism or coercion. As the Second Circuit stated in the *Milk Drivers & Dairy Employees case*, "there is no violation of § 8(b)(4) unless the union encourages the employees to *coerce* the secondary employer. Where the employees are encouraged only to exercise a valid contractual right to which the employer has agreed there is no coercion" (245 F. 2d at 820).

The National Labor Relations Board itself, until recently, held and urged the view that "there is nothing in the express provisions or underlying policy of Section 8(b)(4)(A) which prohibits an employer and a union from voluntarily including 'hot cargo' or 'struck work' provisions in their collective bargaining contracts, or from honoring these provisions" (*Rabouin* v. *N.L.R.B.*, 87 NLRB 972). Since the arguments formerly advanced by the Board itself aptly express the views we desire to urge here, we ask the Court's indulgence to quote at some length from the Board's brief (pp. 40-41) in the Second Circuit in *Rabouin d/b/a Conway's Express* v. *N.L.R.B.* (195 F. 2d 906):

> "As far as Section 8(b)(4)(A) is concerned, an employer is at liberty to refrain from dealing with any person he chooses. As part of this freedom of action, on the occasion of a dispute between a union and another person, the employer may defer to the wish of the union that he cease dealing with the union's antagonist. Many factors may influence the employer to accede to the union's request. He may desire to aid the union lest substandard employment terms at the struck plant introduce undesirable competitive prac-

[2] The Oxford Universal Dictionary, 3rd Edition, 1955, defines "force" and "require" as follows:

Force: to use violence to, to compel, to bring about by force or effort, to constrain by force, to overpower by force, to urge, compel to violent effort, to drive by force, impel, to lay stress upon, press home, to obtain or take by force, to win by violence, to enforce.

Require: to ask for authoritatively or imperiously, to demand, claim, insist on having; to demand as necessary or essential on general principles or in order to comply with some regulation.

tices resulting from lower labor costs; the union may grant him a concession on other issues in exchange for his assistance; he may feel that preservation of harmonious relations with the union is preferable to doing business with the struck employer; or he may be convinced of the rightness of the union's cause. Section 8(b)(4)(A) does not deprive the employer of the opportunity to order his business on the basis of considerations of this nature which the union may advance. Nor does it deprive the union of the right to urge these factors upon the employer, so long as the employer's consent is won by means short of an actual strike or the inducement of his employees to strike, which are the sole influences from which the employer is freed by Section 8(b)(4)(A). It is true that the result of the employer's concurrence in the request of the union is to introduce secondary pressure into the primary dispute, but Section 8(b)(4)(A) excludes such pressure only when it flows from an actual strike or its inducement. As the Board explained (P.A. 367a, n. 31), it does not proscribe 'employer-union cooperation' otherwise created.

"This 'employer-union cooperation' need not await the union's actual dispute with another before it may materialize. What employers may do at the time of the dispute, they may contract in advance to do. Thus, all that is involved in a 'hot cargo' or 'struck work' provision is an anticipatory formalization of the employer's conduct in future disputes between the contracting union and another. Nothing in Section 8(b)(4(A) prohibits such a voluntary commitment. It stands as the employer's affirmation of his position upon which the union and the employees may rely, at least until repudiated, in shaping their own conduct.

"* * * In the interim between entry into these agreements and the strike against Rabouin, there is no showing that any of the employers had repudiated their advance commitment. Therefore, the Union was entitled to assume that this remained the employers' position and to convey this information to the employees when they requested guidance as to whether to

handle Rabouin's goods. The resulting refusal of the employees to handle Rabouin's freight was thus in conformity with their understanding of the employers' concurrence in that course of conduct."

Employee refusal to perform services "in conformity with their understanding of the employers' concurrence in that course of conduct" cannot, we submit, constitute a "strike" or "concerted refusal" within the plain meaning of Section 8(b)(4)(A).[3] Moreover, a union induced employee "strike" or "concerted refusal" in reliance on a "struck work" contractual provision can hardly be swept within the ambit of Section 8(b)(4)(A) by a subsequent employer repudiation of his contractual obligation, for the "forcing or requiring", if indeed there be any under such circumstances, is not induced by or the result of employee pressure but caused by his own repudiation of his obligation under the contract. The language of Section 8(b)(4)(A) is plainly not designed to protect an employer against himself.

Finally, the employees' "strike" or "concerted refusal" must be one that is "in the course of their employment". Plainly, an employee refusal to perform work which the employee and employer have contractually agreed should not be performed is not a "refusal in the course of * * * employment." The "course of employment" simply does not include or contemplate such activity. And, unilateral

[3] As the Board's brief in the Second Circuit in the *Rabouin* case, *supra*, points out (p. 42):

> "A strike is the concerted withholding of labor to gain the employer's accession to a demand which he is resisting. It is the employees' cessation of 'work at their own volition because of the failure of the employer to meet their demands.' In this case, however, the employees' refusal to handle Rabouin's goods was not in opposition to their employer, not repudiated but acquiesced in throughout. Thus, the indispensable prerequisite of a strike—a demand which the employer resists and for which the strike is called—is missing. A refusal to work in which the employer concurs can hardly be called a strike against him."

repudiation by an employer of an agreement with respect thereto obviously cannot serve to bring such work within the "course of employment." If it could, a financially hard-pressed employer, subject to a "hot cargo" clause, might endeavor to establish business relations with a strike-bound plant, not with any real expectation of doing business with that plant but with the hope that his employees' refusal to perform the work would provide a basis for a civil suit under Section 303(b) of the Act.

If, as this Court has held, Section 8(b)(4)(A) "clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree" (*N.L.R.B.* v. *Rockaway News Supply Co.*, 345 U.S. 71, 80), then it seems equally clear that under the same section parties may agree that employees are not required to work on "struck goods." And, if it is argued that the proviso to Section 8(b)(4) protects the employee's right not to cross a picket line, then it can be argued with equal force and effect that Section 7 of the Act protects the employee's right to bargain with respect to the kind of work to be performed and the scope of his employment. We perceive no logical difference between permitting employees the right not to cross a picket line to perform services at a struck plant for their employer and permitting employees the right not to perform services for their employer on goods that pass through a picket line. Such goods are not normally handled "in the course of * * * employment" by union members, particularly those working under contracts which contain a "hot cargo" clause.*

* The brief *amicus* of the American Trucking Associations, Inc., states "that all that unions were forbidden from doing was to desist from causing employees who would normally handle certain commodities in the course of their employment duties to refuse to do so" (*id* at p. 23).

American Trucking Associations also argues that while parties are not prohibited from executing a contract which contemplates

Two contentions urged herein by the Board merit attention but not approval. First, the proposition is advanced that "there is persuasive evidence that Congress viewed the term 'concerted refusal' as covering employee refusals acquiesced in by the employer, adding the term 'strike' to insure that the ban on secondary boycotts would also reach employee refusals which the employer opposed," (Board's brief, p. 43). As argued above, there can be no "refusal" where an employer has agreed that certain work need not be performed. Both terms, "strike" and "concerted refusal" clearly imply employer opposition, and both terms were used simply to insure the section's applicability to situations in which something less than a work stoppage may occur. If Congress was concerned with "covering employee refusals acquiesced in by the employer," it could easily have done so by writing subsection (4) to read: "(4) to induce or encourage the employees of any employer to cease using, manufacturing, processing, transporting, or otherwise handling or working on any goods, articles, etc."

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the commission of a proscribed act, it cannot be inferred that such a contract is valid and enforceable or that its performance would be lawful (*id* at p. 15). This contention overlooks the fact that a "hot cargo" contract does not contemplate the commission of a proscribed act because the element of "forcing or requiring" in the prohibited act is missing. The examples cited e.g., 48 hour week at straight time rates, are not in point as the statutory requirements there involved contain no element of employer choice whereas in Section 8(b)(4)(A) an employer who voluntarily agrees to a "hot cargo" clause is not "forced" or "required" and consequently not within the applicable scope of the section. Accordingly, while "the prohibition against union inducement or encouragement of certain employee action makes no distinction between emloyees who have a legal right to engage in a work stoppage and those who do not" (*id* at pp. 15-16), the prohibition does make a distinction between strikes having the object of "forcing or requiring" employers and those which do not. It is thus a truly startling proposition that a union is a "tort feasor" (*id* at p. 19) even though no wrong is committed when an employer is not "forced" or "required."

In any event, the "persuasive evidence" to which the Board alludes to support its view not only is not part of the legislative history of Section 8(b)(4)(A) but indeed supports a contrary conclusion. The explanatory statement of Senator Ball (*id* at p. 45) makes it clear that the concerted refusal by the construction union was undertaken with the object of "forcing or requiring" the employer to acquiesce. Obviously, such union activity is proscribed, and an employer's subsequent acquiescence does not render action lawful that was unlawful when undertaken. But by no stretch of the imagination, we submit, does the illustration cited support the Board's view that the term "concerted refusal" covers employee refusals acquiesced in by the employer.

Second, the Board argues that employer consent is of "no moment" because the inclusion of "or other person" in subparagraph (A) indicates that the interests of others are also to be safeguarded and cannot be obliterated without their consent (*id* at pp. 37, 40). For the reasons urged in Point B, *infra*, we do not think that the evidence is "compelling," as the Board contends, that Section 8(b)(4)(A) and (B) was enacted for the benefit of persons in addition to the secondary employer immediately involved. Suffice it to say, we think the term "or other person" is a broad term to include others, such as salesmen, office personnel or subcontractors, who are directly "forced" or "required" by "a strike or a concerted refusal." Otherwise, if the Board's view is correct, a secondary boycott which is legal under Section 8(b)(4)(B) would be rendered unlawful under Section 8(b)(4)(A) because some "other person" has been adversely affected—an obviously absurd construction.

B. *The Legislative History of Section 8(b)(4)(A).*

To say the least, the legislative history of Section 8(b)(4)(A) is neither compelling nor clear as to its intended

scope,[5] which undoubtedly accounts for the Board's ability to rely on the same legislative history now to support its current views as it has in the past to support contrary views.

Admittedly, considerable mention was made, in general, in both the reports and debates, of secondary boycotts, jurisdictional strikes, sympathy strikes and of "horrible examples" of each.[6] But, strangely, and most significantly, nowhere in the legislative history of Taft-Hartley is there any express mention made of the "hot cargo" agreement, as such, or of the validity such agreements would have under the proposed proscriptions, or any indication of an intent to outlaw or proscribe the use of these agreements. The Board and supporters of its current view, of course,

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[5] The Second Circuit in the *Milk Drivers* case (245 F. 2d 817) relied on the "clear" language of Section 8(b)-(4)(A), stating at pp. 820-821:

> "Both the petitioners and the Board see in the legislative history some factors to support their respective positions. The Board points to the Congressional abhorrence of secondary boycotts, and the petitioners find indications that invocation of a hot cargo clause was not what the congressmen meant by secondary boycott. The Board stresses the interference with the public interest produced by any work stoppage and the petitioners point out that more recent efforts to get Congress to outlaw hot cargo clauses were defeated. We do not think such tangential legislative history authorizes us to go behind the clear language."

[6] During the course of debate, Senator Murray, a member of the Senate Committee on Labor and Public Welfare and an opponent of the bill observed:

> "I believe that all of my colleagues on the committee, and all others who have given serious thought to the problems of labor relations will agree that there are few issues that are more complicated and more illusive than those connected with secondary boycotts. Here we have a term, which is almost incapable of any precise definition, but which is one of those very dangerous loaded phrases which can be tossed around indiscriminately to stir the emotions and cloud the brain." (2 Legislative History 1366)

argue that Congress must have intended Section 8(b)(4)(A) to be applicable, regardless of such agreements, in view of Congress' awareness of the prevalence of such agreements in industry at the time of the enactment.

Apart from the possibility that Congress may not have desired to disrupt established labor-management practices in this area, the short answer is that Congress could readily, by appropriate language, have indicated its desire to outlaw "hot cargo" agreements.[7] "The idea which is now sought to be read into the [Act] * * * is not so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it" *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 618.

The keystone of the bridge by which the Board attempts to avoid the plain language of Section 8(b)(4)(A) is that the legislative history of that section demonstrates "Congress' desire to proscribe *all* secondary boycotts" (emphasis supplied, Brief, p. 30) and, accordingly, to safeguard the interests of the public generally (*id* at p. 32). We believe that the structure must fall. Congress had no intention of going as far as the Board contends. Rather, keeping in mind that the Act is a "product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators" (*Rabouin* v. *N.L.R.B.*, 195 F. 2d 906, 912), it is evident that Congress intended, at most, to outlaw *some* secondary boycotts and to protect innocent neutrals, not the public generally, against strike action which would involve them in labor disputes in which they were not otherwise concerned.

From the very inception of the legislative process which culminated in the Taft-Hartley Act, the "shotgun" approach

[7] In 1941, a statute was enacted in California specifically outlawing "hot cargo" agreements (see *Ex Parte Blaney*, 184 P. 2d 892), and this statute was called to the attention of Subcommittee No. 3 of the House Judiciary Committee, 77th Cong., 2nd Sess., Serial No. 17, pp. 135-136.

for dealing with unfair labor practices was eschewed. There was no intent to ban *all* secondary boycotts, but, rather, an intention to confine the reach of 8(b)(4) to the narrow scope indicated by its language. The Senate Report states (S. Rep. No. 105, 80th Cong., 1st Sess., 1 Leg. Hist. 413-414):

> "Many and diverse proposals designed to define and correct those union practices which are properly the subject of Federal control, have been presented to the committee, by witnesses who appeared before us as well as by members of the committee. Both witnesses and committee members were in substantial accord that many union practices, especially secondary boycotts, jurisdictional disputes, violations of collective bargaining contracts, and strikes and boycotts against certifications of the National Labor Relations Board, should be subject to Federal regulation. With respect to other aspects of labor-management relations, there has been a considerable divergence of opinion as to the necessity for Federal regulation. Moreover, witnesses and committee members have made numerous suggestions as to the form in which legislative action to remedy unfair practices by unions should be cast.
>
> "After a careful consideration of the evidence and proposals before us, the committee has concluded that *five specific practices* by labor organizations and their agents, affecting commerce, *should be defined as unfair labor practices*. Because of the nature of certain of these practices, especially jurisdictional disputes and *secondary boycotts* and strikes *for specifically defined objectives*, the committee is convinced that additional procedures must be made available under the National Labor Relations Act in order adequately to protect the public welfare which is inextricably involved in labor disputes," (emphasis supplied)

Thus, it was not *all* secondary boycotts but only "secondary boycotts * * * for specifically defined objectives" that were proscribed. Accordingly, a secondary boycott that is not union induced is not prohibited, so that neutral employ-

ers are free to cease doing business with or handle the products of another employer when such action is voluntary or when it is brought about by any means other than coercion through actual strike action or inducement of a neutral's employees to strike.

Indeed, not even all union induced secondary boycotts were intended to be proscribed, as is evidenced by the careful wording of Sections 8(b)(4)(B) and (D)[8] which specifically sanction certain secondary boycotts. As explained by Senate Report No. 105, *supra:*

> "Paragraph (B) is intended to reach strikes and boycotts conducted for the purpose of forcing another employer to recognize or bargain with a labor organization that has not been certified as the exclusive representative. It is to be observed that the primary strike for recognition (without a Board certification) is not proscribed. *Moreover, strikes and boycotts for recognition are not made illegal if the union has been certified as the exclusive representative.* * * * *
>
> "Paragraph (D) deals with strikes or boycotts having as their purpose forcing any employer to assign work tasks to members of one union when he has assigned them to members of another union. However, *if the employer against whom the strike or boycott is directed is failing to conform to a determination of the Board fixing the representation of the employees performing the work tasks, then the strike or boycott is*

[8] Sections 8(b)(4)(B) and (D) provide as follows:

"(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; * * * *

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: * * *"

not an unfair labor practice." (1 Leg. Hist. 428-429; emphasis supplied)

That this continued to be the meaning and scope of these sections throughout the entire legislative process is plainly evidenced by the statements in House Conference Rept. No. 510 (93 Cong. Rec. 6451; 1 Leg. Hist. 547-548) that under clause (B) "strikes and boycotts for recognition were not prohibited if the union had been certified as the exclusive representative," and under clause (D), "if the employer against whom the strike or boycott was directed was failing to conform to a determination of the Board fixing the representation of employees performing the work tests, then the strike or boycott was not an unfair labor practice."

That Congress was fully aware that it was acting in a limited area in proscribing strikes and boycotts is further evidenced by the statement in the House Conference Report, *supra* (1 Leg. Hist. 561), relative to the adoption of the procedure of Section 10(1) of the Senate amendment as follows:

> "Section 10(1) of the Senate amendment directed the Board to investigate forthwith any charge of unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b) of the conference agreement, which deals with *certain* boycotts and with *certain* strikes to force recognition of uncertified labor organizations and which has been discussed in connection with that section of the conference agreement." (emphasis supplied)

In view of the wide area of permissible, indeed authorized, secondary boycott activity, we fail to perceive the logic of the argument that in proscribing "certain boycotts" Congress was primarily concerned with safeguarding the

interests of the public generally.[9] The inference, rather, is that Congress had a limited objective. It was concerned not with safeguarding the interests of the public generally, but, as the court below correctly stated, with "the protection of those persons who might be subjected to a secondary boycott which is proscribed by the section" (247 F. 2d at 74).

This conclusion of the Circuit Court is substantiated by the indications of Congressional concern over the involuntary involvement of innocent neutrals in labor disputes that do not concern them at all, as the following excerpts from the Congressional reports and debates demonstrate:

> "* * * (13) 'Sympathy strike' (14) 'Illegal Boycott' and (15) 'Jurisdictional strike.' The activities that these three terms describe have in common the characteristic that they do not arise out of any dispute between an employer and employees who engage in the activities, or, in most cases, between the employer and any of his employees. More often than not the employers are powerless to comply with demands giving rise to the activities, and many times they and their employees as well are the helpless victims of quarrels that do not concern them at all." (House Report No. 245 on H.R. 3020, 1 Leg. Hist. 314).

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[9] That Congress appreciated it could not protect the interests of the public at large from the effects of labor strife without a wholesale restriction on strikes and boycotts is evidenced by the following remarks of Senator Murray (2 Leg. Hist. 1367):

> "There is no doubt that in an economy such as ours, in which specialization and interdependence are the keynotes, virtually any strike of any significance adversely affects the interests of third parties, many of whom are wholly innocent, and frequently wholly incapable of influencing the settlement of the dispute.
> * * * *
> "Certainly, therefore, the evil of the workers striking or refusing to handle in order to bring pressure upon some employer to cease dealing with another cannot be said to lie in the fact that innocent third parties are affected, unless we are willing to place a similar restriction on any strike which has a like effect."

• • • •

"Illegal boycotts take many forms. Often they are to compel employers to force their employees into unions or to give a union control over them as their bargaining agent in violation of the Labor Act itself. Sometimes they are direct restraints of trade, designed to compel people against whom they are engaged in to place their business with some other than those they are dealing with at the time, or *vice versa*." (House Report No. 245 on H.R. 3020, 1 Leg. Hist. 315)

In Senate Report No. 105 on S. 1126, supplemental views, p. 54 (1 Leg. Hist. 460), the following appears:

"There appears to be virtually no disagreement as to the complete injustice of secondary boycotts and jurisdictional strikes or as to the necessity of giving injured third parties a remedy against their operation. For the most part, it is the same employer, often with less than 50 employees, and the farmer or farm trucker who are the main victims of this type of racketeering union activity. *To a small storekeeper, or machine shop, picketed out of business by unions intervening between him and his employees,* or to the farmer prevented from unloading his perishable produce, the remedy of dealing with the NLRB is a weak reed." (emphasis supplied)

Representative Landis, a proponent of the bill, made the following remarks (93 Cong. Rec. A1296):

"*Secondary boycotts* engaged in by labor unions to force *a third party, not a party to a primary labor dispute, to force that party* to cease using the products of the employer engaged in the primary dispute is an activity which should be made illegal." (emphasis supplied)

During the course of debates, Senator Taft had occasion to note:

"I think the committee all agreed that those types of strikes [including secondary boycotts] are in effect racketeering strikes. They are strikes which are not direct strikes to settle questions of wages or hours or better working conditions. They are *strikes which are, in effect, attempts to bring indirect pressure on third*

parties, to get third parties to work in some way to bring about a result which may ultimately be favorable to the one initiating the pressure, which has no direct relation to the work except perhaps with regard to the question of power." (2 Leg. Hist. 1012; emphasis supplied)

* * * *

"The bill provides that that type of *strike* [secondary boycott] is an unfair labor practice: When a strike occurs, *the man who is* damaged by it is to go to the National Labor Relations Board and file a charge, and they give him a hearing." (2 Leg. Hist. 1013; emphasis supplied)

* * * *

"I do not quite understand the case which the Senator has put. This provision makes it unlawful to resort to a secondary boycott to *injure the business of a third person who is wholly unconcerned in the disagreement* between an employer and his employees."[10] (2 Leg. Hist. 1106; emphasis supplied)

* * * *

"Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, 'We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions.' Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States. *There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions.* If their conditions are not satisfactory, then

[10] Note that Senator Taft did not say "businesses of third persons who are", which the Board seems to think was intended. See Board's brief, p. 32, n. 26. If the Board's view is correct, presumably an individual in the District of Columbia building a private dwelling which is not completed on schedule because of materials held up by an unlawful secondary boycott in the State of Washington could initiate a suit against the erring union—a result, we submit, which was never contemplated.

it is perfectly lawful to encourage them to strike." (93 Cong. Rec. 4323, 2 Leg. Hist. 1107; emphasis supplied)

* * * *

"I have heretofore cited the *typical case* of a secondary boycott, wherein the small businessman is practically put out of business because he is required to recognize, we will say, an AFL union, and a CIO union will not handle his goods. There are a number of cases of that kind in the record." (2 Leg. Hist. 1371; emphasis supplied)

And, finally, the House Conference Report points up the limited area of Congressional concern for the employer who is subjected to a secondary boycott. As the report states:

"Under clause (A) strikes or boycotts, or attempts to induce or encourage such action, were made unfair labor practices if the purpose was to force an employer or other person to cease using, selling, handling, transporting, or otherwise dealing, in the products of another, or to cease doing business with any other person. Thus *it was made an unfair labor practice for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B. Similarly it would not be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B.*" (House Rept. No. 510, 80th Cong., 1st Sess., p. 43, 1 Leg. Hist. 547; emphasis supplied)

We think it manifest from the foregoing, as well as many other portions of the legislative history, that when Congress referred to the public's interest in regulating secondary boycott provisions, it was not speaking in terms of the public interest at large or in a vacuum, but as it was directly related to the specific activities under consideration.[11]

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[11] Quotations from the legislative history or from the Act itself, indicating that the Act was passed "in the public interest" prove nothing. All provisions of the Act were, of course, passed "in the public interest," but both language of Section 8(b)(4)(A) and its legislative history indicate that Congress deemed antithetical to the public interest only strikes against neutrals or inducements of neutrals to strike.

We think Congress said that as to secondary effects arising from labor disputes, it is in the public interest to protect the neutral or secondary employer, not a party to the labor dispute between the primary employer and his employees (or their representative), who is the unfortunate and helpless victim, involuntarily involved but adversely affected by the dispute. In short, "In an effort to narrow the area of industrial strife, and thus to safeguard the national interest in the free flow of commerce * * * [Section 8(b)(4)(A)] has in effect banned picketing when utilized to conscript in a given struggle the employees of an employer who is not himself a party to the dispute. Such we understand to be the purport of 8(b)(4)(A) of the Act." *Printing Specialties & Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 334 (CA 9).

Thwarted by the plain language and legislative history of Section 8(b)(4)(A), the Board and supporters of its current view that "hot cargo" agreements are invalid look for succor to "the policy of the statute". (Board's brief, pp. 53-54; American Trucking Associations' brief, pp. 29-34). But, as the Board pointed out in its brief in the *Rabouin* case in the Second Circuit, "where conduct sought to be condemned is not embraced within the statutory terms, it will not do to 'search for their equivalent in that circumambient aura, so often euphemistically described as 'the policy of the statute'.' Judge Learned Hand in *McComb v. Scerbo*, 177 F. 2nd 137, 141 (CA 2)." Specifically, the Board itself in its decision in the *Rabouin* case (87 NLRB 972) found "no merit" in the argument that "hot cargo" contracts "were repugnant to the policy of the amended Act * * * " (*id* at 982). And, in the *Milk Drivers* case, the Second Circuit did not "accept the argument that hot cargo clauses are against public policy", stating:

> "The advocates of this view ignore the statutory language to talk about 'secondary boycotts' and the undoubted Congressional dislike of them. Having assumed that refraining from work described in a hot

cargo clause is a 'secondary boycott' they frame the issue in terms of whether a hot cargo clause is a defense to a § 8(b)(4) unfair practice. We cannot agree with this characterization of the issue. There is no need for a 'defense' unless there has been a violation; and in determining the latter question we look to the statutory language, rather than the vague concept 'secondary boycott', about which the legislators sometimes talked, but which they did not write into the Act." (245 F. 2d at 822)

If, indeed, "hot cargo" agreements are violative of Section 8(b)(4)(A) or repugnant to the policy of the statute, Congress has had ample opportunity to so indicate. Employer spokesmen have repeatedly urged Congressional committees to amend the Taft-Hartley Act so as to invalidate "hot cargo" clauses but Congress has not done so. See American Trucking Association's brief *amicus*, pp. 6-7; testimony of Powell Groner before Senate Committee on Labor, Proposed Revision of Labor-Management Relations Act, 1947, pt. 1, 83rd Cong., 1st Sess., p. 166 (1953) and at the same hearings, Barden at p. 3022; Denham before House Committee on Education and Labor, Hearings on H. R. 115, 83rd Cong., 1st Sess., pt. 2, p. 395 (1953). In addition, in 1954, Senator Schoeppel of Kansas introduced a bill (S. 2989) to amend Section 8(b)(4)(A) for the purpose of specifically outlawing boycotts implemented through hot cargo clauses. After extended discussion (see Cong. Rec. for May 6, 1954, p. 579), the Senate refused to take action, despite the fact that at that time the Board was still adhering to its *Rabouin* decision. Subsequently, after the Board had ceased its adherence to *Rabouin*, Senator Curtis on May 14, 1956, introduced a new bill, S. 3842. After pointing out that the present statutory phraseology had not proven sufficient to cover all cases of secondary boycott and stating that "the present Board has adopted a more reasonable view of the matter", Senator Curtis went on to urge that "the problem is so important that it should not be left to the opinions of appointees to admin-

istrative office. Congress must speak once and for all in regard to the matter" (102 Cong. Rec. 8022). Congress has taken no action.

In these circumstance, the remarks of the Court in *United States* v. *International Boxing Club of N. Y.*, 348 U.S. 236 at p. 244, with respect to the significance of a similar legislative omission to amend the anti-trust laws are applicable:

> "* * * No further action was taken on any of the bills; Congress thus left intact the then existing coverage of the antitrust laws. Yet the defendants in the instant case are now asking this Court for precisely the same exemption which enactment of those bills would have afforded. Their remedy, if they are entitled to one, lies in further resort to Congress, as we have already stated. For we agree that 'Such a broad exemption could not be granted without substantially repealing the antitrust laws'."

II

Various Types of "Unfair Goods" Clauses Are Widely Prevalent In Collective Bargaining Agreements.

[This portion of this brief *amicus* was prepared, and the data for it assembled, by the AFL-CIO Department of Research.]

The economic brief submitted by the Teamsters Union cites historical studies and illustrative clauses from collective bargaining agreements negotiated in past years to demonstrate that provisions on refusal to handle struck or non-union goods ("hot cargo") have long been a part of American labor-management relations.

To obtain current information, the AFL-CIO Department of Research conducted a partial survey covering several dozen unions affiliated with the AFL-CIO to determine the general nature and extent of such provisions at this time.

The findings of this survey demonstrate (1) that such clauses are very widespread in existing American collec-

tive bargaining agreements, having been negotiated by many different unions in a wide range of industries, (2) that they cover a very substantial number of workers, and (3) that they take a wide variety of forms.

Even this limited survey found more than half a million workers covered by some type of "struck goods" or "non-union" goods provision (in addition to the number of workers covered by "hot cargo" provisions negotiated by the Teamsters Union).

The number of workers covered is particularly significant in light of the fact that the problem to which such clauses are directed does not readily arise in some types of industries. Thus, in some industries with continuous processes or integrated operations, the prospect of workers being called on to handle struck goods from another plant is fairly remote, so the question does not arise as a practical problem and unions there have not sought provisions to meet it.

There are many variations in the provisions on the handling of struck or non-union goods. In the basic variations, the company agrees that it will not handle such goods and/or that it will not require its employees to handle such goods and/or that refusal by employees to handle such goods will not be considered a violation of the agreement's no-strike provision and will not be subject to penalty.

These basic forms and the many variations in detail are reflected in the specific clauses cited in the following pages. (Not included in this brief survey are closely related provisions often found in labor-management agreements stating that workers may respect and need not cross picket lines.)

The unions covered in the survey are listed below, in alphabetical order, with (1) their estimates of the number of members covered by some type of struck work or non-union (unfair) goods provisions in their agreements, and (2) the texts of clauses from specific major current agree-

ments negotiated by the international or one of its local unions covering sizable numbers of workers. (Several clauses are quoted from agreements covering relatively small numbers of members where the clause offers a good illustration of a special variation.)

Automobile, Aircraft and Agricultural Implement Workers of America, United

Struck goods provisions appear in only a small proportion of the union's agreements. A random check discloses several dozen such agreements, primarily covering relatively small bargaining units. The two samples below cover 1000 or more employees each.

Clause from agreement with The Electric Auto-Lite Company, Toledo, Ohio, covering some 3200 workers:

> "The Management agrees that should a controversy arise in regard to materials, tools, etc., being brought into the plant from a strike-bound plant, settlement of such controversy shall be subject to negotiations between the Management and the Executive Shop Committee, and there shall be no stoppage of work while the negotiations for settlement are in progress."

Clause from agreement with Ainsworth Manufacturing Corporation, Detroit, Michigan, covering approximately 1000 workers:

> "The Corporation agrees not to take jobs belonging to another Corporation which is engaged in a current strike for the purpose of completing work on such jobs in the Corporation's plant. The employees shall not be penalized for refusing to handle such work."

Brewery, Flour, Cereal, Soft Drink and Distillery Workers, International Union of United

Some 11,000 employees are covered by clauses in 31 agreements of the union stating that the company will not handle struck goods. About 8000 workers are covered by provisions in 63 agreements stating that the company will not handle non-union goods. (About 2000 of these workers

in 16 of these agreements include both the struck goods and non-union goods provisions.)

Clause from agreement with Milwaukee, Wisconsin, brewing companies (Blatz, Gettelman, Miller, Pabst, Schlitz), covering more than 7000 workers:

> "Employees shall not be required or requested to handle or process barrels belonging to or bearing the markings of a Brewer whose employees are on strike."

Clause from agreement with Carling Brewing Company, Belleville, Illinois, covering more than 500 employees:

> "Only Union Made malt shall be used. The employees covered by this agreement shall not be required to handle nor shall it be a violation of this agreement for them to refuse to handle any other malt or to handle or to process beer made with any other malt. Other Union Made material shall be given preference, provided price, quality and general conditions are equal."

Chemical Workers Union, International

Clause from agreement with Lever Brothers Company:

> "The Company will not accept sub-contracts from any other business firm the employees of which are represented by the International Chemical Workers' Union, AFL-CIO, and who are on authorized strike against the said Company. This provision, however, shall not be construed to require the Company to breach any contracts arrived at prior to any such strike."

Clothing Workers of America, Amalgamated

Many of the union's agreements in the men's cotton garment industry contain struck work clauses. They cover more than 30,000 workers.

Clauses from standard agreements in cotton garment industry:

> "Members of the Union shall not be required to work on any merchandise which is intended for any manufacturing firm with whom the Union has a labor dispute. It shall not be considered a breach of this agreement on the part of the Union or on the part of any

individual employee if any employee or employees refuse to cross a picket line authorized by the Union establishing it, either of their own volition or by direction of the Union, nor shall such refusal be cause for discharge or discipline."

"The Employer shall not send work to a contractor with whom the Union has a labor dispute. Nor shall the Employer work in behalf of another manufacturer or contractor with whom the Union has a labor dispute."

"Employees shall not be required to work on merchandise intended for a firm with whom the Union has a labor dispute."

Garment Workers Union, International Ladies'

Provisions on struck goods, on handling of non-union goods, and use of non-union contractors are normally included in the union's major agreements.

Clause in standard agreements in the Northeast, Eastern Out-of-Town, Cloak Out-of-Town, Upper South, Southeast and Florida Regions:

"The employer shall not perform any work for or give any work to any concern against which a strike has been declared, and in no event shall it request any of its employees to perform work destined directly or indirectly for such concern. Such work shall not be deemed in the workers' regular course of employment, and the workers need not perform such work."

Clause in agreement with the California Sportswear and Dress Association:

"Members of the Association who cause to be manufactured shoulder pads, belts, embroidery, covered buttons, pleating and tucking on garments, etc. shall deal only with such firms as are in contractual relations with the Union."

Hatters, Cap and Millinery Workers International Union United

Approximately 40 of the union's agreements, covering an estimated 5000 workers, contain struck goods clauses.

Clause in 16 agreements covering 1000 workers:

"The Employer agrees that it will not sell to nor purchase from nor do work for any other employer whose employees are on strike or with whom the Union has a labor dispute until such strike or labor dispute in each case has been fully settled.

"No employee shall be required or requested by the Employer to perform any work for any other employer whom the Union has declared to be unfair or with whom the Union has a labor dispute; performance of such work shall not be deemed in the regular course of the employee's employment and refusal to perform such work shall not be deemed a breach of this agreement."

Clause in agreement with New York associations of cap makers, covering 2000 workers:

"The Employer agrees that he will not work for, perform any work for, or supply any merchandise to, any manufacturer or jobber during pendency of a stoppage or strike declared by the Union, or its parent body, the United Hatters, Cap and Millinery Workers International Union, against such manufacturer or jobber. The Employer agrees that he will not require his workers to work on any work to be performed for, or merchandise to be supplied to, any such manufacturer or jobber. The Union may direct the employees of the Employer to cease their work either individually or collectively at any time that the Employer fails to observe the provisions of this clause in absolute good faith, and such cessation of work, whether individually or collectively, shall not be deemed to be a breach of this agreement on the part of the Union or of the workers."

Lithographers of America, Amalgamated

Struck work clauses have been negotiated in 94 percent of the union's agreements in the United States and cover over 29,000 workers, or 93 percent of the union's membership. Some 87 percent of the union's agreements, covering about 27,500 members, contain a "trade shop" clause on the handling of work made by other than the union's members.

Standard clause on struck work:

"The parties agree that the employees will not be required to execute work (other than work actually in process in its plant) received from or destined for any lithographic employer or lithographic plant, or any lithographic work previously and regularly produced by such employer or in any such plant, with whom the Amalgamated Lithographers of America has a dispute, of which the Company has been advised by the Union in writing. Furthermore, in the event an employer shall execute any such work, in whole or in part, then the Union shall be entitled in its discretion to terminate this agreement forthwith by notice in writing."

Standard "trade shop" clause on non-union work:

"It is agreed that employees will not be required to use any lithographic production work made in any shop which was not under contract with the Amalgamated Lithographers of America. Furthermore, in the event the employer uses any such work in its plant, then the Union may in its discretion terminate this agreement as to such employment forthwith by notice in writing."

Machinists, International Association of

More than 100 of the union's agreements contain struck work clauses.

Clause from agreement with Cutler-Hammer, Inc., Milwaukee, Wisconsin, covering 3360 workers:

"The Company shall not require the members of the Union to work on material emanating from plants in which there is a labor controversy."

Clause from agreement with A.C.F. Industries, Inc., Albuquerque, New Mexico, covering 775 employees:

"The Company will not require the Employees to use, process, transport, or work on legally struck goods. The individual or concerted refusal to work on legally struck goods shall not constitute grounds for discipline, discharge or lay-off.

"Legally struck goods for this Article shall be considered to be only those items which the Company, during

a legal strike at another facility, may undertake to finish or to produce at the request of the struck company or the AEC for the duration of the strike only, which are not items of regularly scheduled production for this plant.

"Concerted refusal to work on legally struck goods shall not constitute a work stoppage or strike within the meaning of this Agreement.

"The Company will not require the Employees to cross any legal picket line established on or in front of the premises by a Bargaining Agent which has been certified to represent any Employees of the Company. The individual or concerted refusal to pass such legal picket line shall not constitute grounds for discipline, discharge or lay-off."

Marine and Shipbuilding Workers of America, Industrial Union of

Some form of struck goods provision has been negotiated in practically all of the union's major agreements, covering some 40,000 workers.

Clause from agreement with Bethlehem Steel Company, Shipbuilding Division, Atlantic Coast Yards, covering 15,000 to 20,000 workers:

"provided, however, that the Company shall not require any Employee to enter and do any work in any shipyard (other than one of the Yards) in which a strike shall be in progress."

Clause in agreement with Maryland Shipbuilding & Drydock Company, Baltimore, Maryland, covering approximately 3500 workers:

"The Company will not require any employee to work on a ship moved from a shipyard which is on strike."

Meat Cutters and Butcher Workmen of North America, Amalgamated

Provisions on handling of "unfair" goods have been negotiated in more than 20 agreements covering more than 18,000 workers in the retail meat field.

Clause from agreement covering retail markets in California, covering 16,750 workers:

"A. The Local Union shall have sole jurisdiction over its members insofar as the handling of unfair products are concerned, and in the event of one or more products being declared unfair, that three (3) days or seventy-two (72) hours notice in advance of such action on the part of the Union shall be served in written or verbal form upon the Employer or his duly appointed representative and the Local Union agrees that no action shall be taken against more than one national packer and one independent packer and one company of each of the other industries at any one time.

"B. The Union agrees that its members shall not discriminate against merchandise on hand in the Employer's market during the three (3) days of seventy-two (72) hours' notice given by a duly authorized representative of Local 551 that such merchandise is unfair."

Packinghouse Workers of America, United

Clause from agreement with John Morrell & Company, plants at four locations, covering 3500 to 4000 workers:

"In the event of a strike in other meat packing plants the Company shall not request any of its employees to kill, cut, or process any products for and in behalf of any such plant at which a strike is in progress, unless otherwise agreed to by the Union."

Clause in agreement with Columbia Packing Company, Boston, Massachusetts, covering 250 workers:

"The Company agrees that it will not receive, process or handle in any way or sell, or deliver any livestock, products or materials which have come from or been manufactured, processed, transported, storaged, or handled or serviced in any way by or which are to be delivered to, transported, storaged, processed, or serviced or handled in any way by any individual firm, partnership or corporation which is involved in a labor dispute with a bona fide labor organization. The Company will not request or direct any Employee

in the bargaining unit to perform any work on or with respect to, or handle or treat with any such livestock, products or materials and a failure or refusal of any Employee to do so shall not be grounds for discharge, discipline or penalty of any kind."

Printing Pressmen's and Assistants' Union of North America, International

Some 95 percent of the union's agreements in newspaper and commercial printing have struck work clauses. More than one-half of its agreements in specialty printing contain such clause. Over 90,000 workers are covered by these clauses.

Standard clause in union's agreements:

"Insofar as the application of this provision may be lawful, the Union reserves the right to refuse to execute any struck work received from or destined to any unfair employing printer or publisher, including all instances where a strike or lockout exists, which involves members of the International Printing Pressmen and Assistants' Union of North America."

Shoe Workers of America, United

About 40 percent of the union's agreements, covering approximately 20,000 of its members, contain some restriction on the handling of goods coming from or going to factories which are on strike.

Clause in agreements in State of Massachusetts, covering about 10,000 members:

"No member of the Union shall be required to work on shoes coming from a factory, factories, or houses where a strike or lockout or labor controversy exists insofar as this provision is in accordance with and in conformity to law."

Clause in agreements in States of Maine and New Hampshire, covering about 8000 members:

"No members of the Union shall be required to work on shoes coming from a factory, factories, or houses where an authorized strike or a lockout or a bona fide labor controversy exists, nor shall such members be

required to work on component parts coming from a factory, factories or houses where a strike exists in which the United Shoe Workers of America are a party."

Textile Workers Union of America

About 400 of the union's agreements, covering about 15,000 workers, contain a clause on struck or non-union materials.

Clause in standard agreement of major branch of the dyeing and finishing industry in the New York-Metropolitan area, covering some 130 plants employing about 10,000 workers:

"1. The Employer hereby covenants and agrees so far as it is lawful, for it to do so, that it will not print, finish, bleach, process, or work on:

"(a) Goods that do not bear the union label referred to above, or

"(b) Goods which in whole or in part come from or are destined for an Employer in whose plant the Union has authorized a strike or has declared is being operated under substandard or unfair labor conditions, or

"(c) Goods of a person, firm or corporation who is transferring goods to a plant in which the Union has authorized a strike or which it has declared is being operated under substandard or unfair labor conditions.

"2. Irrespective of any limitation on qualification contained in subsection 1 of this Section XXVII and as a separate and independent covenant and agreement, the Employers hereby covenants and agrees that under no circumstances or conditions will it request or require its employees or any of them to perform any labor, work or services, directly or indirectly upon:

"(a) Goods that do not bear the union label referred to in Section XXVI, or

"(b) Goods which in whole or in part come from or are destined for an employer in whose plant the Union has authorized a strike, or which the Union has declared is being operated under substandard or unfair labor conditions, or

"(c) Goods of a person, firm or corporation who is transferring goods to a plant in which the union has declared is being operated under substandard or unfair labor conditions; and it is covenanted and agreed by the Employer that the failure and refusal of its employees to work on such goods shall not constitute a breach of this Agreement."

Typographical Union, International

All agreements approved by the international union contain struck work clauses. These cover some 75,000 workers.

Standard clause in agreements is substantially as follows:

"(The employer) agrees not to require employees covered by this agreement to execute work received from or destined for a job shop or newspaper composing room in which an authorized strike by, or lockout of, a subordinate union of the ITU is in progress. The Union will give (the employer) forty eight hours notice in writing that a strike or lockout is in progress before the processing of materials may be stopped in accordance with the foregoing provisions."

All approved agreements also contain a clause stating that "the General Laws of the ITU, in effect January 1, ..., not in conflict with law or this contract, shall be observed on conditions not specifically enumerated herein". The provision of the General Laws dealing with this subject states:

"Subordinate unions at all times have the right to define as struck work composition and mailing room work executed wholly or in part by non-members, and composition, mailing room or other work coming from or destined for printing concerns which have been declared by the union to be unfair, after which union members may refuse to handle the work classified as struck work."

Woodworkers of America, International

About 10,000 workers are covered by struck work provisions negotiated by this union.

Clause in agreement with Weyerhaeuser Timber Company, covering about 8,000 workers:

> "The Employer agrees that the employees in his operation shall not be called upon to handle lumber products from operations that are on strike.
>
> "It is agreed that lumber that may be in transit or in the process of loading at the time strike is called shall not be considered unfair and the Union further agrees to furnish the Employer with a list of operations on strike."

Clause in agreement with International Paper Company, Long-Bell Division, covering about 2000 workers:

> " . . . At no time shall employees be required to act as strike breakers, go through picket lines or armed guards or handle products declared unfair by the plant employee members . . . "

CONCLUSION

For the reasons stated herein, and in the briefs for the Unions which are parties to these cases, it is respectfully submitted that unfair goods clauses are both valid and enforceable under the National Labor Relations Act.

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